

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO

SCOTT KOLLER, an individual, on behalf  
of himself, the general public and those  
similarly situated,

Plaintiff,

v.

MED FOODS, INC., AND DEOLEO USA,  
INC.

Defendants.

CASE NO. 3:14-CV-2400-RS

~~PROPOSED~~ FURTHER ORDER RE  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, SETTING DATES  
FOR FINAL APPROVAL

Hon. Judge Richard Seeborg

1           On April 16, 2018, this Court granted preliminary approval to a proposed class action  
2 settlement and asked the parties to provide a further proposed order. (Dkt. # 152.)

3           Having considered the motion papers and the complete record of this action, and good  
4 cause appearing therefore, the Court provisionally certifies the Settlement Class, which consists  
5 of all persons who between May 23, 2010 and the date of Preliminary Approval, purchased, in the  
6 United States, any of the Extra Virgin Olive Oil Products and/or who between May 23, 2010 and  
7 December 30, 2015, purchased, in the United States, any of the Other Olive Oil Products. “Extra  
8 Virgin Olive Oil Product” means bottles of Bertolli Extra Virgin olive oil, except for those  
9 bearing labels “Organic,” “Robusto,” “Gentile,” or “Fragrante.” “Other Olive Oil Product” means  
10 the liquid Bertolli Extra Light or Classico olive oil products. “Excluded Persons” from the  
11 Settlement Class are: (1) the Honorable Richard Seeborg; the Honorable Joseph C. Spero; the  
12 Honorable Edward Infante (ret.); (2) any member of their immediate families; (3) any  
13 government entity, (4) Defendant; (5) any entity in which Defendant has a controlling interest; (6)  
14 any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal  
15 representatives, heirs, successors, or assigns; (7) counsel for the Parties; and (8) any persons who  
16 timely opt-out of the Settlement Class.

17           As set forth below, the Court preliminarily finds and concludes, solely for purposes of  
18 considering this settlement, that the requirements of Rule 23 of the Federal Rules of Civil  
19 Procedure are conditionally satisfied for certification of the Settlement Class to pursue claims for  
20 unjust enrichment and the consumer protection laws of the fifty states and the District of  
21 Columbia (collectively, “states”). Plaintiffs have met the requirements of Rule 23 for the reasons  
22 set forth in Plaintiff’s motion for preliminary approval, including Appendices A and B. (Dkt. #  
23 144), as well as for the reasons stated in the Court’s order granting certification of a California  
24 class (Dkt # 116) and the briefing and arguments provided by Plaintiff in support of that motion.  
25 Plaintiffs, who reside in Arkansas, California, Florida, New Jersey, New York, and North  
26 Carolina, are typical of consumers around the country in that they were all exposed to the  
27 identical label claims, which are alleged to have been false and deceptive for the identical  
28 reasons, and thus, their claims for unjust enrichment and violations of consumer protection

1 statutes “are reasonably coextensive with those of absent class members.” *Just Film, Inc. v.*  
 2 *Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017) (internal quotations omitted).

3 The Court further preliminarily finds that the Class Representatives and Class Counsel  
 4 fairly and adequately represent and protect the interests of the absent Settlement Class Members.  
 5 Thus, the Court conditionally designates the law firm of Gutride Safier LLP and Tycko &  
 6 Zavareei LLP as Settlement Class Counsel and Scott Koller, Carolyn Bissonnette, Cece Castoro,  
 7 Diane Gibbs, Darlene Williams, Robert Glidewell, and Stephen Freiman as Class Representatives  
 8 for purposes of this settlement. The Court designates, and approves, Angeion Group to serve as  
 9 Claim Administrator.

10 This Court previously found that common issues predominate as to Plaintiff Scott Koller’s  
 11 California claims. (Dkt. # 116.) The same findings apply to the claims for purposes of the  
 12 Settlement Class. While this Court must consider differences in state laws as part of the  
 13 predominance inquiry, this Court need not consider “whether the case, if tried, would present  
 14 intractable management problems, for the proposal is that there be no trial.” *In re Hyundai & Kia*  
 15 *Fuel Econ. Litig.*, 881 F.3d 679, 693 (9th Cir. 2018) (“*Hyundai*”) (quoting *Amchem Prods., Inc. v.*  
 16 *Windsor*, 521 U.S. 591, 624, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997)). The Plaintiffs have  
 17 submitted extensive briefing and supplemental materials identifying the similarities and  
 18 differences among state laws and setting forth why the common issues predominate and why the  
 19 differences are immaterial to this litigation. (Dkt. # 144) Further, in circumstances where there  
 20 are majority and minority rules among the states—for example, where one group of states  
 21 requires proof of a particular element while another group does not, there is at least one proposed  
 22 class representative from each group of states, so representatives exist to prove all elements of all  
 23 claims for all variations of the state laws. Were this case to proceed to trial, a verdict form could  
 24 be fashioned for the jury to determine which elements had and had not been proven; it would then  
 25 be a relatively simple administrative process to determine whether the causes of action had been  
 26 proven under the laws of each state. For those reasons, this Court finds that common issues  
 27 predominate with respect to Settlement Class.

28 Pursuant to the stipulation filed on April 7, 2018 and subsequently entered as a Court order

(dkt. # 147), the Court further notes that Defendant did not oppose Plaintiffs' request to amend the complaint, which sets forth causes of action on a nationwide class; that Defendant did not oppose Plaintiffs' request to certify a nationwide settlement class; and that in the event final approval of the settlement agreement is denied, or a remitter is issued reversing an award of final approval, or the Settlement Agreement is otherwise terminated, the claims for persons outside of California will be dismissed without prejudice.

Since the Settlement Agreement is within the range of reasonableness and possible final approval, notice shall be provided to the Settlement Class pursuant to the Settlement Agreement as set forth in the Notice Plan. The Claim Administrator shall provide notice in compliance with 28 U.S.C. § 1715.

A Final Approval Hearing shall be held before this Court at 1:30 p.m. on August 9, 2018, at the United States District Court for the Northern District of California, Courtroom 3 - 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, to address: (a) whether the proposed settlement should be finally approved as fair, reasonable and adequate, and whether the Final Approval Order should be entered, and (b) whether Class Counsel's application for attorneys' fees, costs, and a payment to the Class Representative should be approved. In addition, this Court sets the following dates:

<u>Item</u>	<u>Due Date</u>
Deadline for Claim Administrator to cause notice to be published in the San Francisco Chronicle per the Notice Plan	May 18, 2018
Deadline for Claim Administrator to cause notice to be published in People Magazine per the Notice Plan	June 8, 2018
Deadline for Claim Administrator to cause online notice to be published on internet sites per the Notice Plan	May 18, 2018
Deadline to file motion for final approval and motion for attorneys' fees, costs and incentive awards; response to objections	June 28, 2018
Deadline for Claim Administrator to submit a declaration to the Court attesting to the number of impressions delivered and the number of click-throughs to the Settlement Website	June 28, 2018
Opt-outs (date of online submission, or if mailed, date of receipt	July 12, 2018

(not postmarking) by the Claim Administrator

Objections, Requests to Appear (filing date (not postmarking)) July 12, 2018

Replies in support of final approval and motion for attorneys' fees, costs and incentive awards; response to objections July 26, 2018

Deadline for Plaintiffs/Claims Administrator to file list of opt-outs, objections, and supporting documentation with the Court July 26, 2018

Deadline for the Claim Administrator to provide a declaration to the Court regarding the number and dollar amount of claims received to date July 26, 2018

End of Claim Period 30 days after final approval

If the Settlement is not approved, or if the Effective Date does not occur for any other reason, then the Litigation will continue on behalf of the California Litigation Class. Members of the California Litigation Class who do not wish to be bound by a judgment in favor of or against the California Litigation Class must exclude themselves from the Litigation. The process and time limits for members of the California Litigation Class to exclude themselves from the Litigation are identical to those set forth with respect to the members of the Settlement Class in the Long Form Notice and in paragraphs 10-12 of this Order, except as follows. If the Settlement is not approved or the Effective Date does not occur, members of the California Litigation Class who submitted timely objections to the Settlement or timely claims under the Settlement (whether or not such claims are deemed Valid Claims) shall have an additional forty-five (45) days from notice of termination of the settlement to exclude themselves from the California Litigation Class, and members of the California Litigation Class who submitted timely requests to exclude themselves from the Settlement shall have an additional forty-five (45) days from notice of termination of the settlement to revoke their requests for exclusion and to rejoin the California Litigation Class. To effectuate this right, the all members of the California Litigation Class who submitted timely objections to the Settlement or timely claims under the Settlement (whether or not such claims are deemed Valid Claims) and who provided an email address in connection with their objections or claims shall be provided a further notice by email, informing such persons of

1 an additional period to exclude themselves from the Litigation. In addition, all members of the  
2 California Litigation Class who submitted timely request to exclude themselves from the  
3 Settlement and Litigation and who provided an email address in connection with their request for  
4 exclusion shall be provided a further notice by email, informing such persons of an additional  
5 period to revoke their request for exclusion and to rejoin the California Litigation Class for  
6 purposes of the continued Litigation. Within ten (10) days of the Termination Date, the Parties  
7 shall meet and confer in good faith regarding the content of such notice and then seek to obtain  
8 Court approval for the notice. All requests following the Termination Date for exclusion from the  
9 Litigation or to revoke a prior request for exclusion must be *received* by the Claim Administrator  
10 (not just postmarked) within forty-five days after notice of termination of the settlement, or they  
11 shall not be valid. Members of the California Litigation Class who did not file an objection by  
12 the Objection Deadline or a claim by the Claim Filing Deadline shall have no further right after  
13 the Exclusion Date to exclude themselves from the Litigation, even if the Settlement is not  
14 approved or the Effective Date does not occur.

15 Any Settlement Class Member shall have the right to appear and be heard at the Final  
16 Approval hearing, either personally or through an attorney retained at the Settlement Class  
17 Member's own expense. However, if the Settlement Class Member wishes to object to the  
18 Settlement at the Final Approval Hearing (either personally or through counsel), the Settlement  
19 Class Member must submit a written objection as set forth in the prior paragraph of this Order.

20 In the event that the proposed settlement is not finally approved by the Court, or in the  
21 event that the Settlement Agreement becomes null and void or terminates pursuant to its terms,  
22 this Preliminary Approval Order and all orders entered in connection herewith (including Dkt. ##  
23 147 and 152) shall become null and void, shall be of no further force and effect, and shall not be  
24 used or referred to for any purposes whatsoever in this Litigation or in any other case or  
25 controversy, except as set forth in paragraph 13; in such event the Settlement Agreement and all  
26 negotiations and proceedings directly related thereto shall be deemed to be without prejudice to  
27 the rights of any and all of the Parties, who shall be restored to their respective positions as of the  
28 date and time immediately preceding the execution of the Settlement Agreement.

1 This Order shall not be construed as an admission or concession by Defendant of the truth  
2 of any allegations made by the Plaintiff or of liability or fault of any kind.

3 The Court may, for good cause, extend any of the deadlines set forth in this Order without  
4 further notice to the Settlement Class Members. The Final Approval Hearing may, from time to  
5 time and without further notice to the Settlement Class Members, be continued by Order of the  
6 Court.

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8 **IT IS SO ORDERED** this 24 th day of April, 2018.

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10 Honorable Richard Seeborg  
11 United States District Court Judge  
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